

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

RONALD P. PASSATEMPO, TRUSTEE, )  
On behalf of the Samuel Pietropaolo Irrevacable )  
Trust, SAMUEL PIETROPAOLO, GRANTOR )  
to the Samuel Pietropaolo Irrevocable Trust, )  
and PATRICIA D. PIETROPAOLO, )  
BENEFICIARY of the Samuel Pietropaolo )  
Irrevocable Trust, )

Plaintiffs,

V.

Civil Action No. 05-10118-GAO

FREDERICK V. MCMENIMEN III, BARRY G. ARMSTRONG, NEW ENGLAND ADVISORY GROUP, LLC, 1717 CAPITAL MANAGEMENT COMPANY, NFS PROVIDENT (f/k/a Provident Mutual Life Insurance Company), and NFS FINANCIAL SERVICES, INC.,

Defendants.

**ANSWER OF DEFENDANT NATIONWIDE FINANCIAL SERVICES, INC.**

Defendant Nationwide Financial Services, Inc. (hereinafter “NFS”) answers the First Amended Complaint and Jury Demand of Plaintiffs Ronald P. Passatempo, Samuel Pietropaolo, and Patricia Pietropaolo (hereinafter “Plaintiffs”) as follows:

## Parties

1. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 1 of Plaintiffs' Complaint.
2. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 2 of Plaintiffs' Complaint.

3. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 3 of Plaintiffs' Complaint.

4. The allegations contained in Paragraph 4 of Plaintiffs' Complaint are ambiguous and conclusory. To the extent an answer is required, NFS denies the allegations contained in Paragraph 4.

5. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 5 of Plaintiffs' Complaint.

6. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 6 of Plaintiffs' Complaint.

7. NFS admits the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Nationwide Life Insurance Company of America (hereinafter "Nationwide") is the proper name of Nationwide Provident. Nationwide is a wholly-owned subsidiary of NFS. NFS has an address of 1 Nationwide Plaza, Columbus, Ohio 43215. NFS denies the remaining allegations contained in the first sentence of Paragraph 8 of Plaintiffs' Complaint. The allegations contained in the second sentence of Paragraph 8 are ambiguous and conclusory; to the extent an answer is required, NFS denies the second sentence of Paragraph 8. NFS denies the last sentence of Paragraph 8.

9. NFS admits the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

### **Facts**

10. NFS restates its answers to the above-numbered Paragraphs.

11. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 11 of Plaintiffs' Complaint.

12. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 12 of Plaintiffs' Complaint.

13. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 13 of Plaintiffs' Complaint.

14. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 14 of Plaintiffs' Complaint.

15. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 15 of Plaintiffs' Complaint.

16. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 16 of Plaintiffs' Complaint.

17. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 17 of Plaintiffs' Complaint.

18. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 18 of Plaintiffs' Complaint.

19. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 19 of Plaintiffs' Complaint.

20. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 20 of Plaintiffs' Complaint.

21. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 21 of Plaintiffs' Complaint.

22. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 22 of Plaintiffs' Complaint.

23. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 23 of Plaintiffs' Complaint.

24. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 24 of Plaintiffs' Complaint.

25. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 25 of Plaintiffs' Complaint.

26. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 26 of Plaintiffs' Complaint.

27. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 27 of Plaintiffs' Complaint.

28. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 28 of Plaintiffs' Complaint.

29. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 29 of Plaintiffs' Complaint.

30. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 30 of Plaintiffs' Complaint.

31. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 31 of Plaintiffs' Complaint.

32. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 32 of Plaintiffs' Complaint.

33. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 33 of Plaintiffs' Complaint.

34. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 34 of Plaintiffs' Complaint.

35. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 35 of Plaintiffs' Complaint.

36. NFS admits the first sentence of Paragraph 36 of Plaintiffs' Complaint. NFS is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 36.

37. NFS admits the first sentence of Paragraph 37 of Plaintiffs' Complaint. NFS is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 37.

38. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 38 of Plaintiffs' Complaint.

39. NFS admits that Nationwide subsequently approved an application for life insurance on the life of Plaintiff Samuel Pietropaolo.

40. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 40 of Plaintiffs' Complaint.

41. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 41 of Plaintiffs' Complaint.

42. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 42 of Plaintiffs' Complaint.

43. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 43 of Plaintiffs' Complaint.

44. NFS admits the first sentence of Paragraph 44 of Plaintiffs' Complaint. NFS is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 44.

45. NFS is without knowledge or information sufficient to form a belief as to Plaintiffs' assertion that Defendant Frederick V. McMenimen III (hereinafter "Defendant McMenimen") sold the policy at issue here to Plaintiffs "in coordination with Mr. Armstrong and NEAG." NFS denies the first sentence of Paragraph 45 of Plaintiffs' Complaint insofar as it asserts that Defendant McMenimen sold the Policy to Plaintiffs "through" NFS. NFS admits the second and third sentences of Paragraph 45. NFS denies the last sentence of Paragraph 45.

46. NFS denies the first sentence of Paragraph 46 of Plaintiffs' Complaint. NFS is without knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 46. NFS admits that Nationwide has received approximately \$100,000 in premium payments on the policy at issue here.

47. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 47 of Plaintiffs' Complaint.

48. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 48 of Plaintiffs' Complaint.

49. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 49 of Plaintiffs' Complaint.

50. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 50 of Plaintiffs' Complaint.

51. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 51 of Plaintiffs' Complaint.

52. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 52 of Plaintiffs' Complaint.

53. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 53 of Plaintiffs' Complaint.

54. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 54 of Plaintiffs' Complaint.

55. NFS denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

56. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 56 of Plaintiffs' Complaint.

57. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 57 of Plaintiffs' Complaint.

58. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 58 of Plaintiffs' Complaint.

59. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 59 of Plaintiffs' Complaint.

60. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 60 of Plaintiffs' Complaint.

61. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 61 of Plaintiffs' Complaint.

62. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 62 of Plaintiffs' Complaint.

63. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 63 of Plaintiffs' Complaint.

64. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 64 of Plaintiffs' Complaint.

65. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 65 of Plaintiffs' Complaint.

66. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 66 of Plaintiffs' Complaint.

67. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 67 of Plaintiffs' Complaint.

68. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 68 of Plaintiffs' Complaint.

69. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 69 of Plaintiffs' Complaint.

70. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 70 of Plaintiffs' Complaint.

71. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 71 of Plaintiffs' Complaint.



72. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 72 of Plaintiffs' Complaint.

73. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 73 of Plaintiffs' Complaint.

74. NFS admits that Defendant McMenimen received commissions in connection with the policy at issue here while under contract with Nationwide. NFS denies the remainder of the allegations contained in Paragraph 74 of Plaintiffs' Complaint.

75. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 75 of Plaintiffs' Complaint.

76. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 76 of Plaintiffs' Complaint.

77. NFS denies that Nationwide was ever requested to attend a meeting among Defendant McMenimen, Plaintiff Samuel Pietropaolo's son Samuel Pietropaolo, and representatives of Nationwide. NFS admits the remainder of Paragraph 77 of Plaintiffs' Complaint.

78. NFS admits that Nationwide received a copy of the letter identified in Paragraph 78 and Exhibit I of Plaintiffs' Complaint.

79. NFS denies the allegations contained in Paragraph 79 of Plaintiffs' Complaint.

### **Count I**

80. NFS restates its answers to the above-numbered Paragraphs.

81. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 81 of Plaintiffs' Complaint.

82. NFS denies the allegations contained in Paragraph 82 of Plaintiffs' Complaint.

83. NFS denies the allegations contained in Paragraph 83 of Plaintiffs' Complaint.

84. NFS denies the allegations contained in Paragraph 84 of Plaintiffs' Complaint.

85. NFS denies the allegations contained in Paragraph 85 of Plaintiffs' Complaint.

86. NFS denies the allegations contained in Paragraph 86 of Plaintiffs' Complaint.

## **Count II**

87. NFS restates its answers to the above-numbered Paragraphs.

88. NFS denies the allegations contained in Paragraph 88 of Plaintiffs' Complaint.

89. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 89 of Plaintiffs' Complaint.

90. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 90 of Plaintiffs' Complaint.

91. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 91 of Plaintiffs' Complaint.

92. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 92 of Plaintiffs' Complaint.

93. NFS denies the allegations contained in Paragraph 93 of Plaintiffs' Complaint.

94. NFS denies the allegations contained in Paragraph 94 of Plaintiffs' Complaint.

95. NFS denies the allegations contained in Paragraph 95 of Plaintiffs' Complaint.

96. NFS denies the allegations contained in Paragraph 96 of Plaintiffs' Complaint.

### **Count III**

97. NFS restates its answers to the above-numbered Paragraphs.

98. NFS denies the allegations contained in Paragraph 98 of Plaintiffs' Complaint.

99. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 99 of Plaintiffs' Complaint.

100. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 100 of Plaintiffs' Complaint.

101. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 101 of Plaintiffs' Complaint.

102. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 102 of Plaintiffs' Complaint.

103. NFS denies the allegations contained in Paragraph 103 of Plaintiffs' Complaint.

104. NFS denies the allegations contained in Paragraph 104 of Plaintiffs' Complaint.

**Count IV**

105. NFS restates its answers to the above-numbered Paragraphs.

106. NFS denies the allegations contained in Paragraph 106 of Plaintiffs' Complaint.

107. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 107 of Plaintiffs' Complaint.

108. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 108 of Plaintiffs' Complaint.

109. NFS is without knowledge or information sufficient to form a belief as to the truth of Paragraph 109 of Plaintiffs' Complaint.

110. NFS denies the allegations contained in Paragraph 110 of Plaintiffs' Complaint.

111. NFS denies the allegations contained in Paragraph 111 of Plaintiffs' Complaint.

112. NFS denies the allegations contained in Paragraph 112 of Plaintiffs' Complaint.

113. NFS denies the allegations contained in Paragraph 113 of Plaintiffs' Complaint.

**Count V**

114. NFS restates its answers to the above-numbered Paragraphs.

115. NFS denies the allegations contained in Paragraph 115 of Plaintiffs' Complaint.

116. NFS denies the allegations contained in Paragraph 116 of Plaintiffs' Complaint.

117. NFS denies the allegations contained in Paragraph 117 of Plaintiffs' Complaint.

118. NFS denies the allegations contained in Paragraph 118 of Plaintiffs' Complaint.

**Count VI**

119. NFS restates its answers to the above-numbered Paragraphs.

120. NFS denies the allegations contained in Paragraph 120 of Plaintiffs' Complaint.

121. NFS denies the allegations contained in Paragraph 121 of Plaintiffs' Complaint.

122. NFS denies the allegations contained in Paragraph 122 of Plaintiffs' Complaint.

123. NFS denies the allegations contained in Paragraph 123 of Plaintiffs' Complaint.

**Count VII**

124. NFS restates its answers to the above-numbered Paragraphs.

125. NFS denies the allegations contained in Paragraph 125 of Plaintiffs' Complaint.

126. NFS denies the allegations contained in Paragraph 126 of Plaintiffs' Complaint.

127. NFS denies the allegations contained in Paragraph 127 of Plaintiffs' Complaint.

128. NFS denies the allegations contained in Paragraph 128 of Plaintiffs' Complaint.

### **Count VIII**

129. NFS restates its answers to the above-numbered Paragraphs.

130. NFS denies the allegations contained in Paragraph 130 of Plaintiffs' Complaint.

131. NFS denies the allegations contained in Paragraph 131 of Plaintiffs' Complaint.

### **Count IX**

132. NFS restates its answers to the above-numbered Paragraphs.

133. NFS denies the allegations contained in Paragraph 133 of Plaintiffs' Complaint.

134. NFS denies the allegations contained in Paragraph 134 of Plaintiffs' Complaint.

135. NFS denies the allegations contained in Paragraph 135 of Plaintiffs' Complaint.

136. NFS denies the allegations contained in Paragraph 136 of Plaintiffs' Complaint.

**Count X**

137. NFS restates its answers to the above-numbered Paragraphs.

138. NFS denies the allegations contained in Paragraph 138 of Plaintiffs' Complaint.

139. NFS denies the allegations contained in Paragraph 139 of Plaintiffs' Complaint.

140. NFS denies the allegations contained in Paragraph 140 of Plaintiffs' Complaint.

141. NFS denies the allegations contained in Paragraph 141 of Plaintiffs' Complaint.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs are barred from seeking the relief requested by the applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs are barred from seeking the relief requested by laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from seeking the relief requested.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs have waived their right to seek the relief requested.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from seeking the relief requested by their contributory and/or comparative negligence.

**SEVENTH AFFIRMATIVE DEFENSE**

NFS hereby puts Plaintiffs on notice that it intends to rely on such further defenses as are developed during the course of this litigation. NFS expressly reserves the right to amend its Answer accordingly.

Respectfully submitted,

NATIONWIDE FINANCIAL SERVICES,  
INC.

By its attorneys,

/s/ Timothy J. Casey  
Harvey J. Wolkoff (BBO No. 532880)  
Timothy J. Casey (BBO No. 650913)  
Ropes & Gray LLP  
One International Place  
Boston, MA 02110-2624  
(617) 951-7000

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